

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DENNIS W. JOHNSON and DEPARTMENT OF AGRICULTURE,  
AGRICULTURE STABILIZATION & CONSERVATION SERVICE, Fargo, N.D.

*Docket No. 95-2530; Submitted on the Record;  
Issued January 6, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that his condition subsequent to May 2, 1983 was causally related to his accepted March 2, 1983 employment injury.

This case has been before the Board on three prior occasions. The procedural history indicates that, in an October 31, 1991 decision,<sup>1</sup> the Board set aside a December 11, 1989 decision of the Office of Workers' Compensation Programs, finding that the report of Dr. James O'Donnell, who had been selected by the Office to serve as an impartial medical examiner, was insufficient to resolve a conflict in the medical evidence and remanded the case for the Office to obtain a supplemental opinion from Dr. O'Donnell. In a March 27, 1992 decision,<sup>2</sup> the Board set aside an April 29, 1991 Office decision, finding that Dr. O'Donnell's supplemental report lacked rationale to support his conclusion that appellant's current condition was not work related. The Board remanded the case for referral to another impartial medical examiner to resolve the conflict in the medical evidence. In an October 28, 1994 decision,<sup>3</sup> the Board found that the issue of the cause of appellant's condition after May 2, 1983 remained unresolved as the opinion of Dr. Jack Akmakjian, an orthopedic surgeon who had provided the most recent impartial medical evaluation for the Office, contained unresolved discrepancies. The case was again remanded to the Office. The facts and background of the case contained in the three prior decisions are incorporated herein by reference.

The Board finds that this case is not in posture for a decision.

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<sup>1</sup> Docket No. 90-1028.

<sup>2</sup> Docket No. 91-1622.

<sup>3</sup> Docket No. 93-1655.

Causal relationship is a medical issue,<sup>4</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup> Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>6</sup> Nonetheless, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>7</sup> Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>8</sup>

In this case, following the Board's decision dated October 28, 1994, the Office referred appellant, along with a statement of accepted facts and a set of questions, to Dr. Akmakjian, who provided an impartial medical evaluation for the Office. In a February 25, 1995 report, Dr. Akmakjian discussed the confusion that had arisen regarding his previous reports and advised that he had reviewed the medical record and statement of accepted facts. He reported range of motion limitations and upper back pain and reiterated his previous finding that 50 percent of appellant's condition was due to the March 2, 1983 employment injury and 50 percent due to a nonwork injury, stating:

"I feel that although most of the time [appellant] will probably be asymptomatic, he will have exacerbations. The exacerbations will be related 50 percent to each of the two injuries that he sustained. He currently requires chiropractic treatments seven times or so a year for these exacerbations. He has remained quite active with exercise and has also remained employable, both in farming as well as in the real estate business. [Appellant] reports that he has difficulty with overhead reaching and lifting and difficulty with overhead work using the right upper extremity. On his examination today, he did appear to have a trigger spot along the right thoracic region from the region of about C4 down.

By letter dated March 24, 1995, the Office requested that Dr. Akmakjian provide evidence of objective findings to support a continuing medical condition. In an April 10, 1995

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<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>7</sup> *Larry Warner*, 43 ECAB 1027 (1992).

<sup>8</sup> *See Terrance A. Stath*, 45 ECAB 412 (1994).

report, Dr. Akmakjian advised that a portion of the population will have multifactorial pain on a subjective basis that can never be documented objectively no matter what diagnostic tests are performed. He reiterated his opinion that appellant required palliative care and stated:

“There are ways to work [appellant] up if this is your goal. [Appellant] could undergo a series of cervical discograms at the lower cervical segments and, if at all possible, in the upper thoracic levels as well. I believe one of these will most likely be a precipitant of his pain. This would give you an objective test to figure out where his pain may originate. However, I do not recommend it. I feel this is an unreasonable request to put [appellant] through.”

By decision dated May 9, 1995, the Office denied the claim on the grounds that the evidence failed to establish a causal relationship between the employment injury and the claimed condition. In the attached memorandum, the Office stated that, while appellant continued to complain of pain and Dr. Akmakjian diagnosed a continuing medical condition, he acknowledged that his diagnosis was not based on objective findings and, therefore, appellant failed to establish any continuing residuals causally related to the March 2, 1983 employment injury.

In his February 25, 1995 report, Dr. Akmakjian advised that appellant continued to have exacerbations of symptoms and, on examination, the physician reported that appellant had a “trigger spot” from the C4 level down on the right. In his April 10, 1995 report, Dr. Akmakjian opined that appellant could undergo discography to provide an objective basis for his pain but felt it was unreasonable to require that appellant undergo the procedure. While the Office properly obtained a supplementary evaluation from Dr. Akmakjian because his initial reports were not sufficient to resolve the conflict of medical evidence,<sup>9</sup> he continued to advise that appellant’s condition was employment related and explained his reasoning. His reports are thus sufficient to establish that appellant continued to have residuals of his March 2, 1983 employment injury.

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<sup>9</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated May 9, 1995 is hereby reversed and the case is remanded to the Office to determine the nature and extent of any disability causally related to the March 2, 1983 employment injury.

Dated, Washington, D.C.  
January 6, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member